

Exhibit List
Consol of Kentucky Buffalo Mountain Mine 11-2011

- Exhibit A: Letter to Ginger Mullins, Chief, Regulatory Branch, Huntington District, ACOE. From Thomas R. Chapman, Field Supervisor, USFWS Elkins, WV, Field Office. Re: Public Notice 200400604 and EID, Coal Mac, Inc., Phoenix No. 4 Surface Mine. July 13, 2004.
- Exhibit B: Letter to Ginger Mullins, Chief, Regulatory Branch, Huntington District, ACOE. From Thomas R. Chapman, Field Supervisor, USFWS Elkins Field Office. Re: PN No. 200400658 Hollow Mountain Resources, Inc. July 9, 2004.
- Exhibit C: February 14, 2005, Memorandum of Understanding with OSM, FWS and EPA concerning "Concurrent and Coordinated Review and Processing of Surface Coal Mining Applications Proposing Placement of Dredged and/or Fill Material in Waters of the United States."
- Exhibit D: Letter to Mr. John Studt, Chief Regulatory Branch, Operations Division, ACOE. From Benjamin N. Tuggle Ph.D., Chief of Federal Program Activities, US Department of the Interior, Fish and Wildlife Service. Re: ACOE proposed changes to ACOE NW permit program. July 2, 2001.
- Exhibit E: Letter to Colonel John D. Rivenburgh, District Engineer, Huntington District, ACOE. From Jeffrey K. Towner, Field Supervisor, USFWS Elkins, WV, Field Office. Re: Revised comments on NWP reissuance. September 20, 2001.
- Exhibit F: Letter to Headquarters, USACOE. From Dr. Judy L. Meyer and Dr. J. Bruce Wallace et al, Institute of Ecology, University of Georgia. Re: Proposal to reissue and modify NW Permits. October 5, 2001.
- Exhibit G: The Institute for Water Resources, USACOE. Draft Nationwide Permits Draft Programmatic Environmental Impact Statement. Alexandria, Virginia. July 31, 2001.
- Exhibit H: Letter to Ginger Mullins, Chief, Regulatory Branch, Huntington District, ACOE. From Paul B. Horn, Jr. P.E, Manager of Engineering, Beech fork Processing Inc. Re: New PCN for a new NWP 21. June 3, 2002.
- Exhibit I: A. Dennis Lemly, Ph.D., Senior Scientist in Aquatic Toxicology. Recommendations for Pre-Mine Assessment of Selenium Hazards Associated With Coal Mining in West Virginia. January 5, 2004.

- Exhibit J: Letter to Allyn Turner, Director, Division of Water and Waste Management, WVDEP. From David Densmore, Supervisor, USFWS, Pennsylvania Field Office. Re: Selenium and mercury impacts in West Virginia streams. January 16, 2004.
- Exhibit K: WVCA v. Reilly, No. 90-2034(L), 90-2040 (4th Cir. July 18, 1990) Brief for Appellee William K. Reilly, Administrator EPA.
- Exhibit L: Comments on mitigation plans by Dr. J. Bruce Wallace
- Exhibit M: Hooke, R.L. 1999, "Spatial distribution of human geomorphic activity in the United States: Comparison with rivers," *Earth Surface Processes and Landforms* 24: 687-92.
- Exhibit N: Fritz, Ken; Fulton, Stephanie; Johnson, Brewstersnt; Barton, Chris; Jack, Jeff; Word, David; and Burke, Roger, Structural and functional characteristics of natural and constructed channels draining a reclaimed mountaintop and valley fill coal mine, *J.N. Bethol. Soc*, 2010, 29(2):673-689.
- Exhibit O: U.S. Department of the Interior, Fish and Wildlife Service. 2004. Biological Opinion on the Impacts of the Laxare East & Black Castle Contour Coal Mining Projects on the Indiana Bat; February, 2005. West Virginia Field Office, Elkins, West Virginia.
- Exhibit P: Stacy N. Edmonds and Orie L. Loucks. Woody Establishment Patterns Following Mountaintop Removal in the Coal River Valley. Miami University Oxford. Ohio.
<http://www.mcrcc.osmre.gov/PDF/Forums/Reforestation/Poster/P-1.pdf>
- Exhibit Q: Cathy A. Weakland and Petra Bohall Wood. Cerulean Warbler (*Dendroica Cerulea*) Microhabitat and Landscape-level habitat Characteristics in Southern West Virginia in Relation to Mountaintop Mining/Valley Fills. Project Report for USGS Biological Resources Division Species-At-Risk Program. December, 2002.
- Exhibit S: Expert Report of J. Bruce Wallace in *OVEC v. Army Corps of Engineers*, Civil Action No. 3:05-0784, May 16, 2006.
- Exhibit T: Expert Report of Margaret A. Palmer in *OVEC v. Army Corps of Engineers*, Civil Action No. 3:05-0784, May 16, 2006.
- Exhibit V: Expert Report of Keith N. Eschleman in *OVEC v. Army Corps of Engineers*, Civil Action No. 3:05-0784, May 18, 2006.
- Exhibit W: Transcript of OVEC v. Bulen, Civil No. 3:05-0784 (S.D.W.Va.).

- Exhibit Y: Letter from G. Tracy Mehan, EPA to Dominic Izzo, ACOE, October 9, 2001.
- Exhibit Z: Expert Report of Douglas P. Pflugh in OVEC v. Army Corps of Engineers, Civil Action No. 3:05-0784, May 16, 2006.
- Exhibit AA: USGS, Water Resources Investigations Report 02-4303, "Comparison of Storm Response of Streams in Small, Unmined and Valley-Filled Watersheds, 1999-2001, Ballard Fork, West Virginia," 2003.
- Exhibit BB: USGS, Water Supply Paper 2298, "Simulation of Rainfall-Runoff Response in Mined and Unmined Watersheds in Coal areas of West Virginia," 1989.
- Exhibit FF: Jeffry A. Simmons, Wm. S. Currie, Keith N. Eshleman et al, "Forest to Reclaimed Mine Land Use Change Leads to Altered Ecosystem Structure and Function," *Ecological Applications*, 18(1), 2008, pp. 104-118.
- Exhibit GG: Gregory J. Pond, Margaret E. Passmore, Frank A. Borsuk, Lou Reynolds, Carole J. Rose, "Downstream effects of mountaintop coal mining: comparing biological conditions using family- and genus-level macroinvertebrate bioassessment tools," *J. N. Am. Benthol. Soc.*, 2008, 27(3):717-737 Published online: 8 July 2008.
- Ex. JJ: Declaration of A. Dennis Lemly, Ph.D. On Aquatic Hazard of Selenium Releases From Coal Mining in the Mud River Ecosystem, West Virginia in OVEC v. Hobet Mining CIVIL ACTION NO. 3:08-cv-88, April 17, 2008.
- Ex. KK: FOIA response to Margaret Janes from USEPA RE: comments on Fisher Master's thesis and Maggard Study, May 14, 2009.
- Ex. LL: Kristiansen, J. 16. Dispersal of fresh water algae – a review. *Hydrobiologia* 336. 11996.
- Ex. MM: Baker, J., Grover, J., Ramachandranair, R., black, C., Valenti, T., Brooks, B., and Roelke, D. Growth at the Edge of the Niche: an Experimental Study of the Harmful Alga *Prymnesium parvum*. *Limnol. Oceanogr.* **54**(5), 2009.
- Ex. NN: Baker, J., Grover, J., Brooks B., et al; Growth and Toxicity of *Prymnesium Parvum* (Haptophyta) as a Function of Salinity, Light, and Temperature. *J. Phycol.* **43**, 2007, 219-227.

- Ex. OO: Presentation by Pat Campbell of the WVDEP to community groups on 10-9-09 RE: Dunkard Creek Fish Kill.
- Ex. PP: Bryant, McPhilliamy, Childers. USEPA Region III. Final Report: A Survey of the Water Quality of Streams in the Primary Region of Mountaintop / Valley Fill coal Mining. April 8, 2002.
- Ex. QQ: Palmer and Bernhardt. Mountaintop Mining Valley Fill and Aquatic Ecosystems: A Scientific Primer on Impacts and Mitigation Approaches. 2009
- Ex. RR: Fox, James R. Identification of Sediment Sources in Forested Watersheds with Surface Coal Mining Disturbance Using Carbon and Nitrogen Isotopes. Journal of the American Water Resources Association. Vol. 45 No. 5. October 2009. pp. 1273-1289.
- Ex. SS: Conley, Justin M. Funk, David H. Buchwalter, David B. Selenium Bioaccumulation in the Mayfly *Centroptilum triangulifer* in a Life-Cycle, Periphyton-Biofilm Trophic Assay. Environmental Science and Technology. 2009. 43. 7952-79-57.
- Ex. TT: OVEC v. U.S. Army Corps of Engineers, 2009 WL 4261321 (S.D. W.Va., Nov. 24, 2009)
- Ex. UU: Memo from Nancy Stoner and Cynthia Giles of USEPA to Shawn Garvin, EPA Region 3, Gwendolyn Keyes Fleming, EPA Region 4, Susan Hedman, EPA Region 5, RE: Improving EPA Review of Appalachian Surface Coal Mining Operations Under the Clean Water Act, National Environmental Policy Act, and the Environmental Justice Executive Order. July 21, 2011.
- Ex. VV: Mitchelmore, Carys, University of Maryland Center for Environmental Science, Report on the USEPA Whole Effluent Toxicity Testing at Selected Sites in the Coalfields of Kentucky and West Virginia, February 2010.
- Ex. WW: Palmer et al, Mountaintop Mining Consequences. Science. January 8, 2010.
- Ex. XX: Pond, Greg. Patterns of Ephemeroptera taxa loss in Appalachian headwater streams (Kentucky, USA). Hydrobiologia. December 2009.
- Ex. YY: EPA, EPA-R03-OW-2009-0985, Technical Support Document, Proposed Determination to Prohibit, Restrict, or Deny Specification, or the Use for Specification, of an Area as a Disposal Site; Spruce No. 1 Surface Mine, Logan County, West Virginia.
- Ex. ZZ: EPA, EPA-R03-OW-2009-0985, Notice, Proposed Determination to Prohibit, Restrict, or Deny Specification, or the Use for Specification, of

an Area as a Disposal Site; Spruce No. 1 Surface Mine, Logan County, West Virginia.

- Ex. a: EPA. EPA/600/R-09/138F. The Effects of Mountaintop Mines and Valley Fills on Aquatic Ecosystems of the Central Appalachian Coalfields. March 2011.
- Ex. b: EPA. EPA/600/R-10/023F. A Field-based Aquatic Life Benchmark for Conductivity in Central Appalachian Streams. March 2011.
- Ex. c: Hitt, Nathaniel, Hendryx, Michael. Ecological Integrity of Streams Related to Cancer Mortality Rates. EcoHealth. Online April 2, 2010.
- Ex. g: EPA Science Advisory Board, Final Review of Field-Based Aquatic Life Benchmark for Conductivity in Central Appalachian Streams, March 25, 2011.
- Ex. h: Bernhardt et al, How many mountains can we mine? Ecological thresholds for freshwater ecosystems of the Central Appalachians, Copyright pending November 2010.
- Ex. i: Bernhardt, Emily, Palmer, Margaret. Journal of Ecological Applications. In press.
- Ex. j: Zullig, Keith, Hendryx, Michael, Health-Related Quality of life Among Central Appalachian Residents in Mountaintop Mining Counties. American Journal of Public Health. Vol. 101 No. 5. May 2011. pp 848-853.
- Ex. k: Bernhardt, Emily, Palmer, Margaret. The environmental costs of mountaintop mining valley fill operations for aquatic ecosystems of the Central Appalachians. Ann. N.Y. Acad. Sci. 1223 (2011) pp. 39-57.
- Ex. l: Transcript from Day 1 of OVEC v. U.S. Army Corps of Engineers, 3:08-cv-979.
- Ex. m: Transcript from Day 2 of OVEC v. U.S. Army Corps of Engineers, 3:08-cv-979.
- Ex. n: Transcript from Day 3 of OVEC v. U.S. Army Corps of Engineers, 3:08-cv-979.
- Ex. nn: Pond, Gregory. Biodiversity loss in Appalachian headwater streams (Kentucky, SUA): Plecoptera and Trichoptera communities. Hydrobiologia. Online August 30, 2011.

- Ex. oo: Ahern, Melisa, Hendryx, Michael, Conley, Jamison, Fedorko, Evan, Ducatman, Alan, Zullig, Keith. The Association between mountaintop mining and birth defects among live births in central Appalachia, 1996-2003. Environmental Res. (2011), doi:10.1016/j.envres.2011.05.019.
- Ex. pp: Cores samples from S501807 mining permit application, Section I-8, to the WVDEP.
- Ex. qq: Special toxic materials handling plan, Section O-8, from Hobet S500203 mining application to the WVDEP.
- Ex. rr: Special toxic materials handling plan, Section O-8, from Consol of Kentucky S501807 mining application to the WVDEP.
- Ex. ss: Dawson, Amy. Analysis of mining impact in the Pigeon Creek watershed Mingo County, West Virginia. November 8, 2011.